

Planning & Zoning Commission Mid-Month Meeting
Minutes of November 19, 2009
1st Floor North Conference Room - City Hall

Present: Chair Cindy Weeks; Thomas Byers, Nathaniel Cannady, Jerome Jones and Steven Sizemore (arrived at 4:05 p.m.)

Absent: Vice-Chair Darryl Hart and Mark Sexton

Regular Meeting - 4:00 p.m.

Chair Weeks called the meeting to order at 4:00 p.m. and informed the audience of the public hearing process.

Administrative

- ? Mr. Byers noted two typographical errors in the October 22, 2009, minutes. Mr. Jones moved for the adoption of the amended October 22, 2009, minutes. This motion was seconded by Mr. Cannady and carried on a 4-0 vote (Mr. Sizemore was not present in meeting at this time.)
- ? Chair Weeks presented Public Works Director Cathy Ball and Stormwater Services Manager McCray Coates with flowers, signifying how much the Commission really appreciated the commitment and hard work by staff on the entire stormwater and erosion control ordinance.

Agenda Items

- (1) Proposed changes to Chapter 7, Article 5, of the Code of Ordinances of the City of Asheville concerning project review in the Central Business District based on recommendations from the Downtown Master Plan.**

Urban Planners Julia Cogburn, Alan Glines and Jessica Bernstein Kim Hamel said that this is the consideration of proposed changes to Chapter 7, Article 5, of the Code of Ordinance concerning project review in the Central Business District based on recommendations from the Downtown Master Plan.

Ms. Cogburn said that earlier this year, Asheville City Council adopted in concept the Downtown Master Plan, following almost a year of public forums and meetings. At the time of adoption, Council directed staff to begin looking at the implementation of the various elements contained in the plan. Five subcommittees have been established by the Downtown Commission to work on this implementation. One of these subcommittees, the Downtown Master Plan Urban Design Subcommittee, is charged with reviewing the elements of the Master Plan that will result in amendments to the Design Guidelines for Downtown and amendments to the Unified Development Ordinance (UDO).

The Downtown Master Plan Urban Design Subcommittee began its work by looking at the review process elements in the plan. Strategy 6 of the plan calls for making downtown project review "transparent, predictable, and inclusive of community input." Staff identified eleven action steps contained in the plan that target this goal for project review. The eleven action steps are listed on the matrix provided to the Commission members. This matrix lists the element, describes what current practice on this issue is, lists any current UDO reference(s), suggests a proposed amendment, provides staff commentary as appropriate, and details the proposal of the Urban Design Subcommittee on each issue. The matrix also contains suggestions on variance and appeals processes which were not clarified in the Downtown Master Plan. This chart was presented to the Downtown Commission at their November 13, 2009, meeting. It is proposed that recommendations from the Downtown Commission and the Planning and Zoning

Commission will be taken forward to Asheville City Council. Council will direct staff whether or not to proceed with these proposals and draft them into code amendments for review and approval. These code amendments will be reviewed along with other changes recommended by the master plan.

Pros:

- ? The recommendations are the first step in implementation of the review process elements of the Downtown Master Plan.
- ? The recommendations have been reviewed in detail and deliberated by a subcommittee appointed by the Downtown Commission.
- ? One of the recommendations suggests Council have discretion over the largest of projects in the downtown "core." This differs from the master plan recommendation that Council only review on technical merits.

Cons:

- ? One of the recommendations suggests Council have discretion over the largest of projects in the downtown "core." This differs from the master plan recommendation that Council only review on technical merits.

Staff recommends approval of the proposed recommendations.

Ms. Cogburn then provided the Commission members with a matrix showing the specific recommendation for Strategy 6, the current practice, the proposed amendment, and the Design Action Committee recommendation. She then briefly reviewed following matrix, including the Downtown Commission's recommendations from their meeting on Friday, November 13, 2009, at which time consensus was reached on all items of the Design Action Committee recommendations, except for the following:

- ? Strategy 6A1 - Consensus agreement with the proposal. Recommended requirements for notification of meeting: letter to property owners within 200 feet; advertisement; posting (all more than 10 days in advance of the meeting). (Staff does not recommend advertisement.)
- ? Strategy 6D - No consensus/mixed views. Concerns expressed about not following a central premise in the Downtown Master Plan (DTMP). Others felt that Council needs to have wide latitude in reviewing the largest projects in downtown. Staff's comment was concern over the question of type of review to be conducted by City Council.
- ? Strategy 6J - Consensus agreement with staff recommendation that no changes be made at this time reflecting this strategy. The Downtown Commission time limit on review should address much of the concern. The discussions on a Community Benefits Fund are to take place at a later time. Felt it unlikely City Council would want to review anything that had not been through the full process.

She noted that the Downtown Commission agreed with the following staff recommendations:

- ? Regarding variances, staff recommended that the ordinance be written so that in the DTDR area, staff can flex up to 10% on standards concerning setbacks, openings, and expanses of wall. All other variance requests go to the Planning & Zoning Commission, with the exception of landscaping requests, which go to the Tree Commission (alternative compliance review).
- ? Regarding appeals, staff recommended that appeals from staff or the Downtown Commission go to the Planning & Zoning Commission. Appeals from the Planning & Zoning Commission go to City Council. Appeals from City Council go to the courts.

Related Action Step from DTMP	Current UDO Requirement	Proposed Amendment	Design Action Committee
6A1 –Large projects require early developer sponsored community meetings.	It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located.	Add new Section 7-5-9(d) on procedures for projects within the DDR Overlay District. In this, place the requirement that Level II and III projects require a community meeting. Add to new section, that a community meeting is also encouraged for Level I projects.	Consensus agreement with proposal.
6A2 – All official review meetings should have advertised opportunity for public attendance and input.	Current requirements are that all official review meetings are advertised except DTC.	In new Section 7-5-9(d) continue language that states that all official review meetings be advertised. New language for DTC notification in ordinance.	Consensus agreement with proposal.
6C1 – Revise project level definitions; alter the level thresholds for downtown proposals.	Current UDO levels are same for all districts. Level III nonresidential (except industrial and as listed below) over 100,000 square feet; commercial and mixed-use within ½ mile of the CBD if over 45,000 square feet; residential over 50 units or lots. Level II – Industrial over 100,000 square feet; nonresidential (except as listed below) – 35,000 to 100,000 square feet; 20-50 dwelling units; nonresidential in residential district – over 10,000. Level I – all others except sf dwellings and accessory structures.	In new Section 7-5-9(d) indicates that levels within the DDR Overlay District will be as follows: Level III – Above 175,000 square feet or above the Intermediate Height Zone. Level II – 20,000 to 175,000 square feet and up to the Intermediate Height Zone. Level I – Less than 20,000 square feet. Leave additions as they are.	Consensus agreement with proposal. Exact levels to be discussed with design considerations.
6C2 - Require formal written findings detailing how project does or does not meet requirements.	Current practice is to provide formal written findings.	In new Section 7-5-9(d) make it clear that at each step in the process, formal written reports will be prepared indicating compliance or noncompliance with requirements.	Consensus agreement with proposal.

6C3- Level I – Downtown – staff function (various departments) including design review.	Currently Level I projects are staff-only (various departments) function.	Will place continued practice in new Section 7-5-9(d).	Consensus agreement with proposal.
6C4 – Level II - Downtown – TRC, DTC, P and Z.	Currently Level II projects go to DTC first then to TRC.	In new Section 7-5-9(d) add information on order of process. Process will begin with TRC, go to DTC, and end with P and Z. Amend or delete Section 7-5-10(b) (6) to reflect new process.	Consensus agreement with proposal.
6C5- Level III – Downtown – TRC, DTC, P and Z, and City Council.	Currently Level III projects go first to DTC then to TRC, then to P and Z and then to Council as CUP	In new Section 7-5-9(d) add information on order of process. Process will begin with TRC; go to DTC, next to P and Z, and end at City Council. Amend or delete Section 7-5-10(b)(6) to reflect new process.	Consensus agreement on steps in process. See 6D for type of review decision.
6D – Apply the CUP process only to projects requesting variances from allowed uses.	Currently all Level III projects are treated as CUPs allowing City Council the ability to evaluate a project more broadly, and add conditions to any approval granted.	In new Section 7-5-9(d) add information on order of process, as noted above, and standards by which a project is reviewed.	Consensus of the Committee is to respect the DTMP for all large projects, except those in the downtown “core.” Except in the “core”, projects will go to Council but will only be evaluated on technical merits. All Level III projects in the “core” will require conditional zoning approval. The “core” and exact levels are being discussed with design considerations.
6E – Large development proposals with phased components should submit master plan.	Currently the ability to submit a master plan exists but is not required.	Add requirement for phased plan to new Section 7-5-9(d).	Consensus agreement with proposal.
6I – Establish a specific time limit between submission and	Recently the Downtown Commission adopted a change to their	Add 120 day limit to new Section 7-5-9(d) and also to Section 7-5-10(b)(6).	Consensus agreement with proposal.

written findings for each project review step.	bylaws concerning project review. The new provision states that the Commission may not delay a project for more than 120 days without the consent of City Council. For Level II and III projects, TRC is required to take action within ten days of review of plans. Level I projects have a ten day turnaround. No real time limitations for Level III and P and Z and Council but indicated order of events at these reviews.		
6J - Allow project sponsors to choose project review by Council if: 1) Project review by other commissions has extended past the time limit identified above; 2) Design approval has been denied for not meeting standards; 3) In lieu of making a contribution to the Community Benefits Fund.	Currently there is no process in place to allow project sponsors to choose project review by Council as indicated in DTMP.	See staff recommendation.	Consensus agreement with staff recommendation.
Variances	Currently variances from UDO requirements are heard by the Board of Adjustment. The DTC can modify guideline requirements as they are voluntary in terms of compliance.	The DTMP did not address variance requests. The UDAC wanted to discuss for clarity.	Consensus agreement with staff recommendation.

	Council can grant modifications to certain UDO requirements as part of a CUP or CZ review.		
Appeals	Appeals from staff review go to the BOA. There are no appeals from DTC as compliance is voluntary. Appeals from P and Z go to Council. Appeals from Council go to the courts.	The DTMP did not address appeals. The UDAC wanted to discuss for clarity.	Consensus agreement with staff recommendation.

After this discussion, Ms. Cogburn will add another column to the matrix for the Planning & Zoning recommendation. She asked for a consensus vote in order to bring it before City Council. After City Council gives their direction, staff will then develop the ordinance.

In response to Chair Weeks regarding the kind of discretion City Council would have in Level III projects, Ms. Cogburn said that Council will continue to review the seven conditional use standards. She felt we are not talking about that many projects, especially in the core area. Mr. Sizemore felt that the whole purpose of the TRC, the Downtown Commission and the Planning & Zoning Commission, is to screen the projects to such an extent that by the time it gets to City Council there should be a very narrow set of criteria upon which they are making that decision, other than whatever latitude that may be from an almost political standpoint.

In response to Mr. Jones, Ms. Cogburn said that City Council will be allowed to discuss the project with the developer and community prior to the public hearing. She said explained that conditional zoning is a legislative decision opposed to a quasi-judicial decision.

There was a discussion, initiated by Mr. Byers, regarding a hypothetical example of how this might work in practice regarding a project's color or shape.

Mr. Jones noted that extensive community comment has always served the community well; however, we elect officials, pay staff and have advisory board to make those decisions.

When Chair Weeks asked if anyone would like to comment on this matter, no one spoke.

After discussion, the Planning & Zoning Commission reached consensus on all the items of the Design Action Committee and the Downtown Commission recommendations, responding specifically to the following:

- ? Strategy 6A1 - Consensus agreement with proposal with requirements for posting and mailings, but not advertising.
- ? Strategy 6D - Consensus agreement with recommendation of the Design Review Committee.
- ? Strategy 6J - Consensus agreement with staff recommendation that no changes be made at this time reflecting this strategy.

The Planning & Zoning Commission also agreed with the following staff recommendations:

- ? Regarding variances, staff recommended that the ordinance be written so that in the DTDR area, staff can flex up to 10% on standards concerning setbacks, openings, and expanses of wall. All other variance requests go to the Planning & Zoning Commission, with the exception of landscaping requests, which go to the Tree Commission (alternative compliance review).
- ? Regarding appeals, staff recommended that appeals from staff or the Downtown Commission go to the Planning & Zoning Commission. Appeals from the Planning & Zoning Commission go to City Council. Appeals from City Council go to the courts.

(2) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville regarding Changes to the Sidewalk Ordinance.

Public Works Director Cathy Ball said that the purpose of this report is to provide the Planning & Zoning Commission with information related to proposed changes to Section 7-11-8 of the Unified Development Ordinance (UDO) sidewalk ordinance.

Ms. Ball noted that there were a number of issues brought to us from the development community about the existing sidewalk ordinance. Given that it had not been reviewed for several years, staff felt it was important to look for changes that didn't necessarily favor the development community, but to what was reasonable and fair. She invited the Commission's feedback on any unintended consequences. The three goals staff started out with in looking at these changes were (1) current economic conditions; (2) are we getting the desired outcome that we are looking for; and (3) encourage fee-in-lieu of where appropriate.

She explained that the goal of being able to collect more money in the fee-in-lieu account is that we can construct sidewalks where they need to go now where they're most needed or where there is opportunity that is available, opposed to putting it where there is new development and create only sidewalk linkages, or the need may be created 20-30 years from now. This also prevents the fee-in-lieu of construction fee from stopping the feasibility of a project and allows for a fairer assessment of smaller impact projects.

She then reviewed in detail the changes and the incentives (or lack of incentives) to have developers pay the fee-in-lieu of:

- ? Consolidate the geographical areas where the fee-in-lieu of construction funds can be spent.
- ? Allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if the sidewalk is only required on one side of the street.
- ? Provide the ability for the fee-in-lieu of construction amount not to exceed 15% of construction costs even if the sidewalk is shown as a needed linkage on the Pedestrian Thoroughfare Plan.

She explained the standard in the proposed Standards, Specifications & Details Manual when sidewalks are required on both sides of the street. It basically says that if any of these conditions exist sidewalks are required on both sides of the street: (1) a new street width from face to face that exceeds 30-feet; (2) a new street projected averaged daily traffic of 1,000 vehicles per day; (3) the street is within one-half of a mile of different pedestrian generating activities, e.g., schools, recreation centers, churches; or (4) if either side of the street is zoned Central Business District, Mixed Use District, Neighborhood Corridor District, Urban Village, or Urban Residential District. If the project is in a situation where it would not be required to put sidewalk on both sides, then staff is proposing that the developer pay only 50% of the fee because the developer on the other side of the street would have to pay the other 50%.

This amendment (1) allow more flexibility in where the City can spend fee-in-lieu of construction funds by combining the existing two areas into one; (2) allow developers to pay a fair amount in fee-in-lieu of construction when sidewalk is only required on one side of the street; and (3) prevent the fee-in-lieu of construction fee from stopping the feasibility of a project and allows for fairer assessment of smaller impact projects. However, this could potentially reduce the amount of money that can be spent to build sidewalks in the fee-in-lieu of construction account.

Chair Weeks supported giving staff the option to implement a Pedestrian Master Plan for the City that is not so spotty, but actually build in the more dense areas from the core out with the monies collected.

Ms. Ball responded to the question raised by Mr. Sizemore when he wondered if all monies are combined into a pool that is no longer restricted to east and west, is there a chance that the account will be depleted to such an extent that for a period of time one area of the City gets more sidewalk attention than the other geographical areas.

In response to Mr. Sizemore regarding appeals, Ms. Ball said that staff did not want appeals to go to the Board of Adjustment because all of the standards in the Standards, Specifications and Details Manual are more technical in nature. Putting those forward to a political body (Board of Adjustment) was not staff's recommendation. The appeal needs to stand on the merits of the technical requirements of the ordinance. She said that this appeal process is set up for developers who are not happy with the decisions of staff, e.g., if the developer can pay the fee-in-lieu of, or how much that fee is. The appeal process is not set up for a citizens group that is not happy with how the City is spending the money. That would be a City Council complaint. Assistant City Attorney Martha McGlohon said that the appeal committee will have certain standards and guidelines to follow prepared by the City Attorney's Office.

In response to Chair Weeks, Ms. Ball explained that the City's Pedestrian Thoroughfare Plan is their overarching document.

Chair Weeks opened the public hearing at 5:02 p.m.

Ms. Claudia Nix, facilitator for the Bike and Pedestrian Task Force, said that they are concerned about availability for both bicycles and pedestrians due to the tremendous number of needs. Due to the large number of sidewalk needs, she was concerned about asking developers to pay only half of the fee if sidewalk is only required on one side of the street, especially when we don't have enough money for the needs now and the fee-in-lieu of fee is not even enough to cover the costs. She also provided the Commission with a report showing that Asheville is rated #9 out of 15 metros in North Carolina for the "pedestrian danger index" (higher score meaning worse for pedestrians).

Mr. James Judd noted that he had sent the Commissioners an e-mail regarding concerns with the proposed changes and apologized if those concerns had already been addressed in his absence. Regarding the 50% incentive, he hoped staff would look at other ways to incentivize, e.g., tax liens or some sort of payback on property taxes over 20 years. He felt it was important for new construction to construct sidewalks because it is difficult to get sidewalks built after new construction is completed.

Chair Weeks closed the public hearing at 5:09 p.m.

Ms. Ball said that she would be happy to talk with Mr. Judd about his concerns which had already been addressed by the Commission.

Ms. Ball responded to Mr. Cannady when he asked what the cost per linear foot is to install sidewalks.

Based on the above findings and the analysis provided in the staff report, Mr. Jones moved to recommend approval of the proposed changes to Section 7-11-8 of the UDO regarding the sidewalk ordinance. This motion was seconded by Mr. Cannady and carried on a 5-0 vote.

- (3) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville regarding amendments to the Flood Protection Regulations; specifically Section 7-2-5 Definitions, Section 7-5-12 Floodplain Development; Section 7-12-1 Flood Protection Regulations; and Section 7-18-2 Penalties and Violations. Additionally, the Commission will consider adoption of the Federal Flood Insurance Study and Flood Insurance Rate Maps (FIRMS) for the jurisdiction of the City of Asheville.**

Stormwater Services Manager McCray Coates said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding text changes to the floodplain ordinance and changes to the Flood Insurance Study and Flood Insurance Rate Maps.

He said that the purpose of this report is to provide the Planning and Zoning Commission with information related to the proposed Flood Damage Prevention Ordinance and to ask the Planning and Zoning Commission to approve the proposed Ordinance in order for staff to present the Ordinance to the City Council.

The Federal Emergency Management Agency (FEMA) in consultation with the State of North Carolina, have issued new Flood Insurance Rate Maps (FIRM) applicable to the City of Asheville. The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the Flood Insurance Study (FIS) to maintain membership in the National Flood Insurance Program (NFIP). The NFIP provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas. The new FIRMS, have, in some cases, modified the location of the floodway, 100-year floodplain, and 500-year floodplain boundaries in the City of Asheville. The new locations of the floodway may limit how affected property owners may use their properties. The proposed amendments to the text of the floodplain regulations are consistent with the Flood Damage Prevention Model Ordinance prepared by the State of North Carolina, taking into consideration the revised FIS and the revised FIRMS.

In order for the City to be in compliance with the requirement necessary to remain a member of the National Flood Insurance Program (NFIP) provided by FEMA, the City must adopt a revised Flood Damage Prevention Ordinance that is in compliance with the North Carolina Division of Emergency Management Model Flood Damage Prevention Ordinance. The model ordinance was created to satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations. The North Carolina model ordinances have been reorganized, simplified and expanded over the years to clarify older ordinance language.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010 and is adopted by the approval of the Flood Damage Prevention Ordinance

The Flood Damage Prevention Ordinance must be adopted prior to January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

A Flood Ordinance Project Oversight Group has been formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Damage Prevention Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee

include John Broadbrooks, Barber Melton, Karl Koon, Karen Cragnolin, Paul Szurek and Bob Smith.

City staff has held one recent public meeting to discuss the Flood Damage Prevention Ordinance and the revised Flood Insurance Rate Maps (FIRM) with the public. Previous public meetings were held in 2008 prior to the State finalizing the FIRMs which provided the opportunity for public input related to the FIRMs.

Pros and Cons:

- ? The City will satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations.
- ? The Flood Damage Prevention Ordinance follows the State model ordinance which is recommended by the NC Floodplain Mapping Program to be the best way to obtain FEMA approval.
- ? The Flood Damage Prevention Ordinance follows closely with other jurisdictions within Buncombe County and western North Carolina as it relates to floodplain regulations.
- ? The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial.

City staff recommends the Planning and Zoning Commission approve this Flood Damage Prevention Ordinance which will allow staff to present this ordinance to City Council

Mr. Coates explained that through the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA, updated FIS and FIRM applicable to the City of Asheville have been released.

He explained the following Flood Ordinance modifications of the FIRM maps: (1) Three public participation meetings for new FIRM maps held on December 11, 12, and 13 of 2007; (a) December 11, Black Mountain Town Hall. Approximately 70 persons attended a presentation by the state with open question and answer with state, engineers contracted to complete the maps, and local government staff; (b) December 12, AB Tech Enka Campus. Approximately 25 persons attended; and (3) Dec 13, Asheville Public Works Building. Approximately 35 persons attended; (2) Advertising included the County and City websites; contacted fire chiefs to post; Buncombe County TV aired information; press releases sent to Mountain Xpress, Asheville Citizen Times, Urban News, WLOS, Asheville Daily Planet, WNCW, and Asheville Tribune; and (3) This resulted in several articles (a) Clarke Morrison December 13 Citizen Times article on meetings, and 90-day appeal/protest period; (b) Brian Bartlett December 11 Citizen Times entitled "Learn How New Flood Maps May Affect Your Property"; (c) December 9 the Citizen Times article entitled, "Determine Your Level of Flood Risk" which advertised each of the 3 meetings; (d) December 5 Citizen Times article entitled, "Flood Maps to be Displayed" which advertised each of the three meetings; (e) Dec. 5 Mountain Xpress article entitled, "Waterlogged: New Maps Predict Bigger Floods for Swannanoa Valley"; and (f) The three meetings were advertised in this article.

Regarding the FIRM Maps, (1) The new FIRMS have, in some cases, modified the location of the floodway, the 100-year floodplain, and the 500-year floodplain boundaries in the City of Asheville; and (2) Amendments to the Flood Ordinance text reflect required regulation changes associated with the new FIRMs, and required changes made to the N.C. Division of Emergency Management Model Flood Damage Prevention Ordinance.

With regard to the NFIP Program, (1) The National Flood Insurance Program (NFIP) provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas; (2) The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the FIS to maintain membership in the NFIP; and (3) The updated Flood Damage Prevention Ordinance must be adopted prior to

January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

He said that a municipal flood ordinance group was formed to discuss the flood regulations in Buncombe County, including representatives from the City of Asheville, Buncombe County, Black Mountain, and Montreat. Recommendations from the Group determined it was best to utilize the Model Flood Ordinance created by the NC Floodplain Mapping Program (NCFMP) as the base document to ensure State and FEMA approval. Recommendations from the Group determined it was best for the area to have similar flood damage protection requirements.

Also, the Flood Ordinance Project Oversight Group was formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Protection Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee include John Broadbrooks, Barber Melton, Karl Koon, Karen Cagnolin, Paul Szurek and Bob Smith. This Group will continue to meet to discuss floodplain related regulations and guidelines.

Mr. J. P. Johns, PE, Principal with McGill Associates, said that the following sections of the Code of Ordinances will need to be amended: (1) Article II, Section 7-2-5, Definitions; (2) Article V, Section 7-5-12, Floodplain Development; (3) Article XII, Section 7-12-1, Flood Protection; and (4) Article XVIII, Section 7-18-2, Penalties and Violations.

He then explained in detail some of the following major changes: (1) Some definitions related to flood ordinance terminology have been added or modified as required by FEMA; (2) The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial; (3) No new habitable structures or substantial improvements to habitable structures shall be permitted in floodways and non-encroachment areas, except this subsection requirement shall not be applicable to structures that have substantial damage; and (4) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted in the floodway unless: (a) It is demonstrated that the proposed encroachment will not increase the base flood elevations during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed by a registered professional engineer in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment; and (c) Utilities in the floodway now must provide a No-Rise impact analysis (not required in the current ordinance). This is required by FEMA.

Mr. Johns then outlined the following next steps (1) Public Meeting held at the Public Works Building, Tuesday, November 17, 2009, from 5:00 p.m. to 7:00 p.m.; (2) Asheville Planning and Zoning Commission public hearing on Thursday, November 19, 2009, at 4:00 p.m. in the City Hall, First Floor North Conference Room; and (3) Asheville City Council public hearing will be held during the regular meeting of the Asheville City Council on Tuesday, November 24, 2009, at 5:00 p.m. in the Council Chambers located on the second floor of the City Hall Building.

Throughout discussion, Mr. Coates and Mr. Johns responded to various comments/questions from the Commission, some being, but are not limited to: was data from the 2004 flood taken into account in the mapping; distinction between the floodway vs. the flood plain; how would some of the existing older warehouses along the French Broad River meet the requirement if they are substantially renovated in the next few years; is the base flood elevation likely to change over time so that it has to be eventually revised; is flood insurance required if you are located in the floodplain; if you are located near the floodplain, can property owners still buy flood insurance; and the difference between the 100-year rainfall event and the 100-year flood event.

In response to Mr. Jones on whether staff notifies property owners on whether they are or are not in the floodplain, Mr. Coates said that notification was done by advertisement in the paper and letters were sent to 300-plus people who own property in Buncombe County but do not live here stating that they were not in the floodplain before but they are now. Mr. Sizemore was concerned that property owners may wish to purchase, or cancel, flood insurance if they know whether they are in the floodplain or not. He wondered if staff could look into whether it would be cost prohibitive to notify the property owners of their status in the floodplain. Mr. Johns said that there are roughly 2,700-2,800 landowners whose properties are adjacent to the floodplain and floodway.

As a point of reference for the Commission, Ms. Ball responded to Mr. Byers when he questioned the flood relationship to the baseflood elevation in the floods in Biltmore Village in 2004.

In the non-conforming section, Mr. Cannady felt that due to our economic climate a non-conforming use shall be deemed discontinued after a period of two years (not 365 consecutive days). Assistant City Attorney Martha McGlohon requested the language be that it be consistent with the current provisions in the Unified Development Ordinance.

Chair Weeks opened the public hearing at 5:48 p.m. and when no one spoke, she closed the public hearing.

Based on the above findings and the analysis provided in the report, Mr. Cannady moved to recommend approval of the following amendments to Chapter 7 of the Code of Ordinances: sections of the Code of Ordinances will need to be amended: (1) Article II, Section 7-2-5, Definitions; (2) Article V, Section 7-5-12, Floodplain Development; (3) Article XII, Section 7-12-1, Flood Protection, with an amendment to the non-conforming use section to make it consistent with the current provisions in the Unified Development Ordinance; and (4) Article XVIII, Section 7-18-2, Penalties and Violations. This motion was seconded by Mr. Sizemore and carried unanimously by a 5-0 vote.

Other Business

Chair Weeks announced the next meeting will be the regular meeting on Wednesday, December 2, 2009, beginning at 5:00 p.m. in the First Floor North Conference Room in the City Hall Building.

Adjournment

At 5:50 p.m., Chair Weeks adjourned the meeting.